

THE HONORABLE RICHARD A. JONES

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

D.T., by and through his parents and guardians,
K.T. and W.T., individually, on behalf of
similarly situated individuals, and on behalf of
the NECA/IBEW Family Medical Care Plan,

Plaintiff,

v.

NECA/IBEW FAMILY MEDICAL CARE
PLAN, THE BOARD OF TRUSTEES OF THE
NECA/IBEW FAMILY MEDICAL CARE
PLAN, SALVATORE J. CHILIA, ROBERT P.
KLEIN, DARRELL L. MCCUBBINS, GEARY
HIGGINS, LAWRENCE J. MOTER, JR.,
KEVIN TIGHE, JERRY SIMS, AND ANY
OTHER INDIVIDUAL MEMBER OF THE
BOARD OF TRUSTEES OF NECA/IBEW
FAMILY MEDICAL CARE PLAN,

Defendants.

NO. 2:17-cv-00004-RAJ

**DECLARATION OF FRANK FOX, Ph.D.
IN OPPOSITION TO DEFENDANTS'
MOTION *IN LIMINE***

Noted for Consideration:
November 15, 2019

1 I, Frank Fox, Ph.D, declare as follows:

2 1. I have personal knowledge of the facts in this declaration and am competent to
3 testify to them.

4 2. I have been a consulting economist and have owned and operated my own
5 consulting firm, HealthTrends, since 1996. I earned my Ph.D. in Economics at the University of
6 Washington in 1977. I began my career in econometric modeling in the defense industry. I moved
7 into health care economics in the early 1980s. Since I have had my own consulting practice, I have
8 provided healthcare planning, statistical analysis and financial consulting to many of the hospitals
9 in the State of Washington and in other parts of the country. I have also been engaged by numerous
10 physician practices as an expert in health economics and financial/statistical modeling. I have been
11 retained, qualified and/or have testified as a statistical expert, an expert in economics and health
12 economics, a healthcare planning expert, and a damages expert, including in a number of cases in
13 which I was called upon to model and estimate the damages due to Plaintiffs resulting from a health
14 plan's failure to provide health benefits, among which were several in which damages were sought
15 for a health plan's failure to provide autism benefits.. My education, qualifications and experience
16 are summarized in my curriculum vitae, attached as *Appendix 4* to the Fox Expert Report. *See* Dkt.
17 No. 117-6 at pp. 3, 60-71.

18 3. In addition to the cases in which I was deposed and testified as an expert witness in
19 the past five years listed in Sec. 1.21 of my report, this year I have been retained to serve as an
20 expert in at least five class action cases, in which I have not been deposed or testified, involving
21 claims that a health plan failed to provide required health benefits to participants with mental health
22 conditions. In three of those four cases, I have been asked to provide an analysis of the expenditures
23 class members made that they could have avoided if the health plans in question had offered the
24 benefits sought under the lawsuits.
25
26

1 4. In my experience as an economist, I have been trained to make and have often made
2 in a professional capacity financial and other economic forecasts in which I have had to estimate
3 the prevalence of particular conditions/events, the utilization rates of particular services, and the
4 likely costs and benefits of the subject I had been asked to analyze. By training and experience, I
5 also have an understanding of the factors that differentiate various sources of data and how the
6 source and methods for gathering such data can make it more or less powerful in building models
7 that employ that data.

8 5. This training and experience, have provided me the knowledge and skills to make
9 estimates of the damages incurred by a the Plaintiff Class during the class period if the Defendants
10 are found liable for failing to provide developmental delay coverage. They have also provided me
11 the knowledge and skills to assess others' (including Matt Plachta's and Mark Fish's) estimates of
12 the costs required to add developmental delay coverage to Defendants' health plan and the factors
13 they as well as Jen Maki, Ph.D. have stated should be considered in making such estimates.
14

15 DATED: November 8, 2019, at Seattle, Washington.

16
17 
18 _____
19 Frank Fox, Ph.D.

CERTIFICATE OF SERVICE

I hereby certify that on November 12, 2019, I caused the foregoing to be electronically filed with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the following:

- **Katie M. Burch**
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- **Robert C Deegan**
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I further certify that I have mailed by United States Postal Service the document to the following non-CM/ECF participants:

- (No manual recipients)

DATED: November 12, 2019, at Seattle, Washington.

s/ Daniel S. Gross
Daniel S. Gross (WSBA #23992)
dgross@sylaw.com